




UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/316,651	05/21/1999	DR. NORM FAIOLA PH.D.	270P109	8093
20874	7590	07/07/2004		
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202				
			EXAMINER NGHIEM, MICHAEL P	
			ART UNIT 2863	PAPER NUMBER

DATE MAILED: 07/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/316,651	Applicant(s) FAIOLA PH.D. ET AL 	
	Examiner Michael P Nghiem	Art Unit 2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 330-385, 393-398, 404-438 and 450-499 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 330-374, 380-385, 393-398, 404-438, 450-454, 456-467, 469-479 and 481-489 is/are allowed.
- 6) ☒ Claim(s) 375, 376, 379, 455, 468, 480, 490, 491, 494 and 496-499 is/are rejected.
- 7) ☒ Claim(s) 377, 378, 492, 493 and 495 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6-16-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Amendment filed on June 16, 2004 has been acknowledged.

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 16, 2004 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 375, 455, 468, and 480 are rejected under 35 U.S.C. 102(e) as being anticipated by Kashimoto et al. (US 6,137,095).

Regarding claim 375, Kashimoto et al. discloses a monitoring system (Figs. 22-25) monitoring food present in at least first and second serving or storage containers (69's), said monitoring system comprising:

- a sensing subsystem (comprising 25) including a first sensing device (sensor of first 69) generating a first at least one data stream (via 9), and a second sensing device (sensor of second 69) generating a second at least one data stream (Figs. 23, 24), said first sensing device adapted to be disposed in said first serving or storage container (73) having food, said second sensing device adapted to be disposed in said second serving or storage container (72);
- processing subsystem (33) receiving and processing said first at least one data stream and said second at least one data stream (Figs. 23, 24),
- wherein said first and second sensing devices are cooking utensils (69) incorporating sensors (Fig. 23).

Regarding claim 455, Kashimoto et al. discloses that at least one of said first and second serving or storage containers is a structure including a refrigerated food storage space (72).

Regarding claim 468, Kashimoto et al. discloses that said processing subsystem is in wireless communication with each of said first and second sensing devices (column 13, line 66 – column 14, line 3).

Regarding claim 480, Kashimoto et al. discloses that said first sensing device (sensor of first 69) continuously generates first data stream data (Fig. 23), wherein said second sensing device (sensor of second 69) continuously generates second data stream data (Fig. 23), and wherein said processing subsystem continuously receives data of said first data stream data and said second data stream data (Figs. 23, 24).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 376 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kashimoto et al. in view of Filipowski (US 4,884,626).

Kashimoto et al. further discloses a display (39a).

However, Kashimoto et al. does not disclose that said first at least one data stream and said second at least one data stream include sensor data, and wherein said processing subsystem displays an alarm indicia on said display if said sensor data of one of said first at least one data stream or said second at least one data stream satisfies a predetermined criteria.

Nevertheless, Filipowski discloses a display (52), wherein said first at least one data stream and said second at least one data stream include sensor data (cooking data, column 5, line 51), and wherein said processing subsystem displays an alarm indicia on said display if said sensor data of one of said first at least one data stream or said second at least one data stream satisfies a predetermined criteria (column 5, lines 52-57) for the purpose of providing information regarding the cooking cycle (column 5, lines 54-57).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Kashimoto et al. with a display for displaying an alarm as disclosed by Filipowski for the purpose of providing information regarding the cooking cycle.

Claim 379 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kashimoto et al. in view of Filipowski as applied to claim 376 above, and further in view of Nam et al. (US 5,262,758).

Art Unit: 2863

Kashimoto et al. as modified discloses the claimed limitations as discussed above except that said processing subsystem is adapted to at least one of time stamp or date stamp received data.

Nevertheless, Nam et al. discloses that said processing subsystem (13) is adapted to at least one of time stamp or date stamp received data (column 3, lines 36-43) for the purpose of assigning a date and time of day (column 4, lines 20-22).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Kashimoto et al. as modified with a time tag capability as disclosed by Nam et al. for the purpose of assigning a date and time of day.

Claims 490, 491, and 496-499 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torimitsu in view of Kashimoto et al..

Regarding claim 490, Torimitsu discloses a monitoring system (Figs. 1, 3) monitoring food present in at least first and second serving or storage containers (10-1 – 10-4), said monitoring system comprising:

- a sensing subsystem (11) including first and second sensing devices (15's, 16's, Fig. 3), said first sensing device (first 15) continuously generating first data stream data and being adapted to be disposed in said first serving or storage container having

food (Figs. 1, 3), said second sensing device (second 15) continuously generating second data stream data and being adapted to be disposed in said second serving or storage container (Figs. 1, 3);

- a processing subsystem (10) receiving and processing data of said first data stream data and said second data stream data (Fig. 1), wherein said first data stream data and said second data stream data include identifier and sensor data (Fig. 5), and wherein said processing subsystem continuously receives data of said first data stream data and said second data stream data (Fig. 1).

Regarding claim 491, Torimitsu discloses that said processing subsystem includes a display (display device, column 6, line 27), wherein said first data stream data includes sensor data, and wherein said processing subsystem displays an alarm indicia on said display if said sensor data satisfies a predetermined criteria (column 6, lines 25-27).

Regarding claim 496, Torimitsu discloses that said processing subsystem includes a display (column 6, line 27), and wherein said processing subsystem is adapted to display on said display said data of said data stream data generated by said at least one sensing device and received by said processing subsystem (column 6, lines 25-29).

Regarding claim 497, Torimitsu discloses that said processing subsystem receives and processes said data of said first data stream data and said data of said second data stream data while said first and second sensing devices are disposed in said first and

Art Unit: 2863

second serving or storage containers (Figs. 1, 3).

Regarding claim 498, Torimitsu discloses that at least one of said first or second serving or storage containers is a structure including a refrigerated food storage space (Abstract, lines 3-4).

Regarding claim 499, Torimitsu discloses that said processing subsystem continuously receives said data of said first data stream data at a predetermined sample rate (Figs. 1, 3).

However, regarding claim 490, Torimitsu does not disclose wirelessly receiving and processing data of said first data stream data and said second data stream data.

Nevertheless, Kashimoto et al. discloses wirelessly receiving and processing data of data stream data (column 13, line 66 – column 14, line 3) for the purpose of providing remote communication between systems (column 13, lines 65-66).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Torimitsu with a wireless communication capability as disclosed by Kashimoto et al. for the purpose of providing remote communication between systems.

Art Unit: 2863

Claim 494 is rejected under 35 U.S.C. 103(a) as being unpatentable over Torimitsu in view of Kashimoto et al. as applied to claim 490 above, and further in view of Nam et al. (US 5,262,758).

Torimitsu as modified discloses the claimed limitations as discussed above except that said processing subsystem is adapted to at least one of time stamp or date stamp received data.

Nevertheless, Nam et al. discloses that said processing subsystem (13) is adapted to at least one of time stamp or date stamp received data (column 3, lines 36-43) for the purpose of assigning a date and time of day (column 4, lines 20-22).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Torimitsu as modified with a time tag capability as disclosed by Nam et al. for the purpose of assigning a date and time of day.

Allowable Subject Matter

4. Claims 377, 378, 492, 493, and 495 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 330-374, 380-385, 393-398, 404-438, 450-454, 456-467, 469-479, and 481-489 are allowed for reasons previously discussed.

Reasons For Allowance

6. The combination as claimed wherein a food monitoring system wherein said processing subsystem displays on said display a graph in which said sensor data of at least one of said first and second bit streams is plotted over time (claims 377, 378, 492, 493) or said processing subsystem displays on said display battery power level data indicating a battery power level of at least one of said first and second sensing devices (claim 495) is not disclosed, suggested, or made obvious by the prior art of record.

Response to Arguments

7. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Contact Information

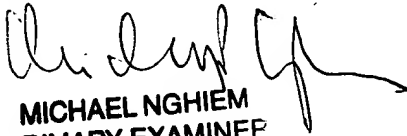
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Nghiem whose telephone number is (571)

Art Unit: 2863

272-2277. The examiner can normally be reached on M-H from 6:30AM – 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached at (571) 272-2269. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



MICHAEL NGHIEM
PRIMARY EXAMINER

Michael Nghiem

July 1, 2004